

## ARTICLE 29 Data Protection Working Party



Brussels, 30 September 2016

Mr Claude Moraes  
Chair of the Committee on Civil  
Liberties, Justice and Home Affairs  
European Parliament  
Rue Wiertz 60  
1047 Brussels

Subject: Letter on the Entry/Exit System and other recent proposals on the large scale IT systems used for border management, visa policy and asylum procedures

Dear Mr Moraes,

After the recent series of terrorist attacks and in the course of the migratory crisis in Europe, the Commission presented a series of documents, aimed at the enhancement of both the external border management and the internal security in the European Union, as well as striving at the interoperability of IT systems in the JHA area.

In particular, on the 6th of April 2016, the Commission presented an updated proposal<sup>1</sup> for the creation of an Entry/Exit system (EES)<sup>2</sup>, accompanied by a Communication on Stronger and Smarter Information Systems for Borders and Security.<sup>3</sup> In addition to this, the Commission presented a Report on the availability and readiness of technology to identify a person on the basis of fingerprints held in the second generation Schengen Information System (SIS II)<sup>4</sup>, a Communication on the European Agenda on Security to fight against terrorism<sup>5</sup> and a proposal to amend the current Eurodac Regulation<sup>6</sup>.

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<sup>1</sup> Proposal for a regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union, COM(2013) 95 final and Proposal for regulation of the European Parliament and of the Council establishing a Registered Traveller Programme, COM(2013) 97 final

<sup>2</sup> Proposal for a regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011, COM(2016) 194 final

<sup>3</sup> Communication on Stronger and Smarter Information Systems for Borders and Security, COM(2016) 205 final.

<sup>4</sup> Report from the Commission to the European Parliament and the Council The availability and readiness of technology to identify a person on the basis of fingerprints held in the second generation Schengen Information System (SIS II) COM(2016) 93 final

<sup>5</sup> Communication from the Commission to the European Parliament, the European Council and the Council delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union (COM(2016) 230 final)

<sup>6</sup> Proposal for a regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] , for identifying an illegally staying third-

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental rights and Union citizenship) of the European Commission, Directorate General Justice and Consumers, B-1049 Brussels, Belgium, Office No MO59 02/13

Website: [http://ec.europa.eu/justice\\_home/fsj/privacy/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm)

Having taken note of these proposals, the European data protection authorities assembled in the Article 29 Working Party (hereafter “the WP29”) would like to confirm once more their dedication to European values and principles and, in particular, to the necessity of ensuring an appropriate balance between public security requirements and the right to the protection of private life and of personal data.

As stated before by the WP29 in several opinions<sup>7</sup>, any new legislative proposal must be compliant with fundamental rights in general and with the right to data protection and the right to privacy in particular, as enshrined in Article 7 and 8 of the Charter of Fundamental Rights of the European Union and in Article 8 of the European Convention on Human Rights. In this context, the WP29 welcomes the efforts of the Commission to address data protection issues and concerns in the recent proposals on the large scale IT systems used for border management, visa policy and asylum procedures. Furthermore, WP29 welcomes the fact that some of the remarks included in its earlier opinion on Smart Borders have been included in the updated proposal for the introduction of an Entry/Exit System and also understands the higher need for efficient means for border management.

However, taking into account the extent and nature of personal data processing, this proposal, as well as the other proposals mentioned above and the intention of striving towards the interoperability of different information systems in the JHA area, will have worrying consequences for the fundamental rights to privacy and to the protection of personal data. In the appendix to this letter, the WP29 states its concerns regarding: the necessity and proportionality of the proposed interferences with the fundamental rights to privacy and to the protection of personal data, the intended interoperability of information systems, the access for law enforcement purposes, the use of biometric data and the proposed retention periods.

In light of the concerns expressed in this letter and its appendix, the WP29 would appreciate being informed about the activities of the High Level Expert Group on Information Systems and Interoperability.

We remain at your disposal for any further input you may require on these subjects.

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN  
Chairwoman

A letter in identical terms is being forwarded to Mr Dimitris Avramopoulos and Mr Peter Javorčik.

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country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast), COM(2016) 272 final

<sup>7</sup> Inter alia opinion WP 145 on the use of Passenger Name Record (PNR) for law enforcement purposes, WP178 on the global approach to transfers of Passenger Name Record (PNR) data to third countries, WP 206 on Smart Borders, WP 211 on the application of necessity and proportionality concepts and data protection within the law enforcement sector